

A Regular Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 10th day of September at 8:00 P.M., and there were

PRESENT:            MARK AQUINO, MEMBER  
                         JAMES PERRY, MEMBER  
                         LAWRENCE PIGNATARO, MEMBER  
                         RICHARD QUINN, MEMBER  
                         ARLIE SCHWAN, MEMBER  
                         ROBERT THILL, MEMBER  
                         JEFFREY LEHRBACH, CHAIRMAN

ABSENT:            NONE

ALSO PRESENT:    JOHANNA M. COLEMAN, TOWN CLERK  
                         JEFFREY SIMME, CODE ENFORCEMENT OFFICER  
                         NICHOLAS LOCICERO, TOWN PROSECUTOR

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

**PETITION OF SCOTT & GAYLE DALTON**

THE CASE CONSIDERED BY THE ZONING Board of Appeals was that of the petition of Scott and Gayle Dalton, 3 Streamview Lane, Lancaster, New York 14086 for one [1] variance for the purpose of erecting a six [6] foot high fence in a required open space area on premises owned by the petitioners at 3 Streamview Lane, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster. The premises upon which this variance is sought is a corner lot fronting on Streamview Lane with an exterior side yard [considered a front yard equivalent] fronting on Harewood Run. The petitioners propose to erect a six [6] foot high fence within the required open space area of the exterior side yard fronting on Harewood Run.

Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster limits the height of a fence or wall extending into a front yard or an exterior side yard [considered a front yard equivalent] to three [3] feet in height. The petitioners, therefore, request a three [3] foot fence height variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicants with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioners of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Scott Dalton, petitioner

Proponent

**IN THE MATTER OF THE PETITION OF SCOTT & GAYLE DALTON**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. LEHRBACH, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. PERRY  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Scott and Gayle Dalton and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 10th day of September 2009, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the applicants are the present owners of the premises in question.

**WHEREAS**, the property for which the applicants are petitioning is within a Residential District 1, (R-1) as shown on the Zoning Map of the Town of Lancaster.

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster with the concurrence of the petitioner, agrees that the fence be located seven (7) feet to the east of the sidewalk along the west side of the property.

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought, noting there is ample green space provided by Slate Bottom Creek located south of the subject property.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicants cannot be achieved by some other method, feasible for the applicants to pursue, other than the area variance relief sought, noting the fence should deter trespassers from this property.

That the requested area variance relief is substantial, however, the neighbor across Harewood Run, to the west, has a back yard facing the subject property, thus mitigating any visual impact.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; there will be no impact to drainage and there is sufficient room for snow removal.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicants if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

That such fence will not unduly shut out light or air to adjoining properties.

That such fence will not create a fire hazard by reason of its construction or location.

That property owners within 100 feet of the subject property were notified of this hearing and only one comment was received, that being a positive written comment from the residents at 246 Enchanted Forest North.

**NOW, THEREFORE, BE IT**

**RESOLVED** that based upon these findings, the relief sought be and is hereby **GRANTED**-subject to the following conditions which in the opinion of this board are appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience and general welfare:

- That the fence will be angled at the northwest corner and the southwest corner at the discretion of the Building Inspector.
- That bushes shall be planted outside the fence between the fence and the sidewalk on the Harewood Run side of the property. The bushes shall be planted as soon as practicable.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. AQUINO	VOTED YES
MR. PERRY	VOTED YES
MR. PIGNATARO	VOTED YES
MR. QUINN	VOTED NO
MR. SCHWAN	VOTED YES
MR. THILL	VOTED NO
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED**.

September 10, 2009

ON MOTION DULY MADE, SECONDED AND CARRIED, the meeting was adjourned  
at 8:27 P.M.

Signed \_\_\_\_\_  
Johanna M. Coleman, Town Clerk and  
Clerk, Zoning Board of Appeals  
September 10, 2009